

S/N 09/559,065

Docket: YOR919990479US1

**REMARKS**

Entry of this Amendment is proper under 37 CFR §1.116, since no new claims or issues are raised and the only claim amendments bring into the limitations the wording that, as best understood, has been ignored by the Examiner but never explicitly so stated.

It is noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-48 are all of the claims pending in the present Application. Claims 31-39 and 48 are allowed.

Applicants gratefully acknowledge the Examiner's indication that claims 11, 14-16, 18, and 24-27 would be allowable if rewritten in independent format. Applicants decline to rewrite the above-identified claims at this time in independent format, since it is believed that the independent claims are fully allowable over the prior art of record, once the description in the preamble has been given patentable weight in the analysis, as is required by the plain meaning of the claim language.

Claims 1, 40, and 47 stand rejected under 35 USC §102(e) as anticipated by US Patent Publication US 2003/0055973 to Kryskow. Claims 1-10, 12, 13, 17, 19-23, 28-30, and 40-47 stand rejected under 35 USC §103(a) as unpatentable over US Patent 5,719,854 to Choudhury et al., further in view of Kryskow.

This rejection is respectfully traversed in view of the following discussion.

**I. THE CLAIMED INVENTION**

As described and claimed, for example, by claim 1, the present invention is directed to a method for managing and controlling allocation and de-allocation of resources based on a guaranteed amount of resource and additional resources based on a best effort for a plurality of customers. Server resources are dynamically allocated for a plurality of customers, such that the resources received by a customer are dynamically controlled and the customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA). The service level agreement includes at least one parameter for defining

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best-effort conditions of dynamically redefining the allocating and de-allocating if the server resources when additional server resources are available but not currently utilized.

The prior art of record fails to teach or suggest this concept of dynamic allocation of server resources as based on a service level agreement that includes one or more parameters that dynamically re-defines allocation and de-allocation for "best-effort" allocations when free server resources are available but not currently utilized.

The present invention, therefore, provides a method in which resources that are available but not currently used can be used to advantageously benefit clients by providing a "best effort" or "as-available" region of service that additionally provides flexibility to the service provider by allowing servers to be switched into and out of service so as to optimize server performance metrics, but does not require strict quarantees of the additional service to the clients.

## II. THE PRIOR ART REJECTION

The Examiner alleges that newly-cited Kryskow anticipates claims 1, 40, and 47 and, when used to modify Choudhury, renders obvious claims 1-10, 12, 13, 17, 19-23, 28-30, and 40-47.

Applicants respectfully disagree, particularly in view of the claim amendments above that bring wording down from the preamble into the claim limitations. It appears that the evaluations of record have implicitly ignored these words.

That is, relative to claims 1, 40, and 47, the Examiner alleges that newly-cited Kryskow anticipates these claims and points to the Abstract and paragraphs 44-46 and 51 of this reference for satisfying the description in these claims.

Applicants submit that, to one of ordinary skill in the art, the description in the Abstract clearly states that Kryskow addresses the different problem of "automatically identifying and setting the level of management access privilege." The description in paragraphs 44-46 do not mysteriously change the purpose of Kryskow, even if the Examiner is able to highlight words taken out of context. Applicants submit that this task of setting management access privilege is entirely different from the task defined in the claimed

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invention of allocating/deallocating server resources, let alone providing a parameter in the SLA that defines "best effort" or "as-available" regions of service at which additional guarantees are not expected.

Hence, turning to the clear language of the claims, in Kryskow there is no teaching or suggestion of: "...dynamically allocating server resources for a plurality of customers, such that said resources received by a customer are dynamically controlled and said customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA), said service level agreement including at least one parameter defining best-effort conditions of dynamically redefining said allocating and de-allocating said server resources when additional server resources are available but not currently utilized", as required by claim 1. Claims 40 and 47 have similar language.

Relative to the rejection based on Choudhury, the Examiner concedes that this reference fails to provide a parameter in the SLA that defines dynamically allocating/de-allocating server resources. Applicants submit that the entirely different purpose of Kryskow, as clearly described in the Abstract, precludes the modification relied upon by the Examiner to overcome the basic deficiency of Choudhury. Moreover, even if Choudhury were to be modified in accordance to isolated wording in Kryskow, the resultant combination would still not provide the feature of the present invention in which "best-effort" or "as available" regions of service are defined in the SLA to allow resources to be utilized without providing a higher level of guarantee.

Neither Choudhury nor Kryskow suggests this feature of the present invention.

For the reasons stated above, the claimed invention is fully patentable over the cited references.

### III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-48, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

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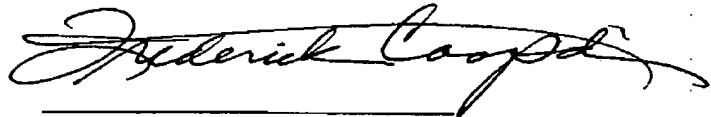
Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date:

6/21/05

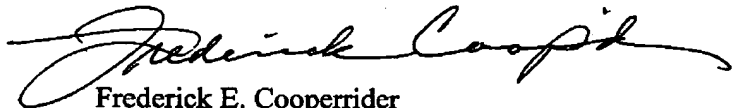


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CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile to (703) 872-9306 this Amendment under 37 CFR §1.116 to Examiner Wen-Tai Lin on June 21, 2005.



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